



# मध्यप्रदेश राजापत्र

## ( असाधारण )

### प्राधिकार से प्रकाशित

क्रमांक 278]

भोपाल, मंगलवार, दिनांक 14 जुलाई 2015—आषाढ़ 23, शक 1937

विधि और विधायी (निर्वाचन) कार्य विभाग

भोपाल, दिनांक 13 जुलाई 2015

क्र. 14-2014-4 वि.निर्वा.-2015-374.—भारत निर्वाचन आयोग की अधिसूचना क्रमांक 82-म. प्र.-वि.स.(14-2014)-2015, दिनांक 2 जुलाई 2015 सर्वसाधारण की जानकारी के लिए प्रकाशित की जाती है।

एस. एस. बंसल, सचिव.

भारत निर्वाचन आयोग  
निर्वाचन सदन, अशोक रोड, नई दिल्ली 110 001

नई दिल्ली, दिनांक 2 जुलाई 2015—11 आषाढ़, 1937 (शक)

अधिसूचना

सं. 82-म.प्र.-वि.स.- (14-2014)-2015.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में भारत निर्वाचन आयोग, एतद्वारा, मध्यप्रदेश उच्च न्यायालय, गवालियर बैंच के निर्वाचन याचिका संख्या 14/2014 (पियुष शर्मा बनाम यशोधरा राजे सिंधिया) जो कि श्री पियुष शर्मा ने श्रीमती यशोधरा राजे सिंधिया के मध्यप्रदेश के 25—शिवपुरी विधान सभा निर्वाचन क्षेत्र हेतु नवम्बर, 2013 में हुए निर्वाचन को चुनौती देते हुए दाखिल की थी, में दिनांक 22 जून 2015 को दिये गये अधिनिर्णय/ आदेश को प्रकाशित करता है।

आदेश से,  
हस्ता./—  
( नरेन्द्र ना. बुटोलिया )  
सचिव,  
भारत निर्वाचन आयोग.

**ELECTION COMMISSION OF INDIA**  
**Nirvachan Sadan, Ashoka Road, New Delhi—110 001**

New Delhi, Dated 2nd July, 2015—11 Ashadha, 1937 (SAKA)

**NOTIFICATION**

No.82-MP-LA-(14-2014)-2015.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgment/order of the High Court of Madhya Pradesh, Gwalior Bench dated 22nd June 2015 in Election Petition No. 147 of 2014 (Peeyush Sharma Vs. Yashodhara Raje Scindia) filed by Shri Peeyush Sharma challenging the Election of Smt. Yashodhara Raje Scindia from 25—Shivpuri Legislative Assembly Constituency of Madhya Pradesh, held in November, 2013.

**उच्च न्यायालय, मध्यप्रदेश, जबलपुर, खण्डपीठ ग्वालियर  
 प्रकीर्ण सिविल/दापिङ्क मामला क्रमांक Election Petition 14/2014**

**आवेदक**

Peeyush Sharma S/o Late Shri Kedar Nath Sharma,  
 Age-42 years Occupation-Advocate,  
 R/o 46-Adarsh Nagar, Shivpuri (M.P.)  
 (mentioned in the electoral roll as Ward  
 No. 13 Mahal Colony, Anubhag No. II Shivpuri)

**विरुद्ध**

1. Yashodhara Raje Scindia D/o Late Shri Jiwaji Rao Scindia,  
 Member of Legislative Assembly,  
 Constituency : Shivpuri-25, Distt. Shivpuri  
 (M.P.) R/o Rani Mahal, Jai Vilas Palace  
 Campus, Lashkar, Gwalior (M.P.)

**ELECTION PETITION UNDER SECTION 81 READWITH SECTION 100 OF THE  
 REPRESENTATION OF THE PEOPLE ACT, 1951 के लिये आवेदन-पत्र**

याचिका आवेदक के वकील श्री Peeyush Sharma याचिकाकर्ता द्वारा दिनांक 21 जनवरी 2014 को प्रस्तुत की गई।

आवेदन-पत्र दिनांक 22 जून 2015 को माननीय न्यायमूर्ति श्री S. K. Palo के समक्ष आवेदक के वकील None for the petitioner और विरोधी पक्षकार के वकील श्री V. K. Bhardwaj, Senior Advocate with Shri Sanjay Dwivedi, Advocate for the respondent की उपस्थिति में अंतिम सुनवाई के लिए प्रस्तुत किया जाना था। न्यायालय द्वारा निम्नलिखित आदेश पारित किया गया:—

**Order 1 EP. No. 14/2014**

22/06/2015  
 Time 10:35

None for the petitioner.  
 None for the respondents.  
 case be taken up on 22/06/2015 at 12:00 noon.

Sd/-  
 (S. K. PALO)  
 Judge.

Later on (12:00 noon)

Order

EP. 14/2014

Peeyush Sharma  
Vs.  
Vashodhra Raje Scindhia

None for the petitioner.

Shri V. K. Bhardwaj, Senior Advocate with Shri Sanjay Dwivedi, Advocate for the respondent.

On 15th June 2015 the counsel for the petitioner has pleaded no instruction on behalf of the petitioner. None appears for the petitioner today, which reflects the petitioner's intend not to further prosecute the petition.

Keeping in mind the provision of Section 109 & 110 of the Representation of People Act, 1951, non-prosecution of election petition or default of appearance by petitioner is examined.

Whether the default of appearance or non prosecution can be treated as on par with withdrawal or abandonment?

There is clear provision in the said Act, 1951 In the opinion of this Court, non-prosecution or abandonment is certainly not withdrawal. Withdrawal is positive or voluntarily act while non-prosecution or abandonment may not necessarily be an act of volition, Non-prosecution or abatement might have caused due to negligence, indifference, inaction or even in-capacity or inability to prosecute. But, it cannot be equated to that of withdrawal. Legislature has incorporated or envisaged different steps in case of withdrawal. But in case of non-prosecution or abandonment, if the election petitioner does not appear before the Court, the statute has not provided any prescribed procedure. This Court has hesitation to lay down different procedure, then what has been provided in the statute. Nor the provision of the Representation of People Act, 1951 can be enlarged or extended by analogy.

Section 87 of the Act, 1951 provides that if there is no provision in the Act to the contrary, provisions of Civil Procedure Code 1908 would apply, which include Order 9 Rule 8 Code of Civil Procedure under which the election petition is liable to be dismissed, if the petitioner does not appear to prosecute the petition. As there is no provision in the Act, 1951 as regard when the petitioner chooses to commit default either in appearance or in prosecuting the petition, certainly, the provision of Code of Civil Procedure, 1908 would apply, as is provided under Section 87 of the Act, 1951. Therefore, in absence of any express provision, Order 9 Rule 8 of the Code of Civil Procedure will apply. This view is fortified by the judgments rendered in **Sunderlal Mannalal Vs. Nandramdas Dwarkadas** (AIR 1958 260), Full Bench of the Allahabad High court in **Duryodhan Vs. Sitaram** (AIR 1970 Allahabad-1), **Rajendra Kumari Bajpai Vs. Ram Adhar Yadav** (1976 1 SCR 255) and Full Bench decision of "**Dr. P. Nalla thamby Thera Vs. B.L. Shanker and others**" (AJR 1984 SC 135). It is not necessary for this Court to express any opinion as to whether the omission to do so by the petitioner is deliberate or inadvertant, but the fact remains that the petitioner has failed to appear and has committed default of appearance or there is non prosecution of the election petition.

In view of the above discussion, and looking to the ratio of the decisions mentioned above, the present election petition is hereby dismissed in default.

No order as to costs.

Sd/-  
(S. K. PALO)  
Judge.

dcs/-

By Order,  
Sd/-  
(NARENDRA N. BUTOLIA)  
Secretary,  
Election Commission of India.